IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 648 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GORDHANBHAI CHHOTABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 648 of 2003

MS ROOPAL R PATEL for Appellant No.

THROUGH JAIL for Appellant No.

MR PD BHATE Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/10/2004

ORAL JUDGEMENT

1. This appeal is preferred by the appellant under sec. 374(2) of Code of Criminal Procedure challenging

the judgment and order dated 16.10.2002 delivered by ld. Jt. District Judge & Addl. Sessions Judge, Fast Track Court, Bharuch in Special N.D.P.S. Case No. 7/2000, whereby the present appellant came to be convicted by the ld. trial judge for the offence punishable under sec. 20(b) of Narcotic Drugs & Psychotropic Substances Act, and was sentenced to undergo 5 years R/I and to pay fine of Rs. 50,000/-, in default, to undergo S/I of 6 months.

2. As per brief facts of the case, the incident occurred on 11.8.2000 and, accordingly, Circle Police Inspector Shr A.F. Sindhi received information on earlier day that two persons on Scooter No. GJ-T-3540 were to travel from Surat to Baroda with big bulk of "ganja'. Necessary surveillance was arranged and at about 7.30 hrs., the said scooter was found coming from Tax Plaza, which was stopped by Police Constable Bhanubhai and the scooter was rounded. The scooter was driven by the present appellant, resident of Petlad and pillion rider was Natubhai Jivabhai Solanki who also was accused of the said special case but came to be acquitted by the ld. trial judge. On search, beneath the seat of driver of the scooter one bag of yellow and blue colour was found and from the said bag, one water bag was found. Inside the said water bag, there was one plastic bag and in the said plastic bag, dry ganja weighing about 1kg. and 500 grams was found. From the boot of the scooter, 600 grams ganja was also found. All mandatory provisions of Narcotic Drugs & Psychotropic Substances Act, 1985, were complied with by the police and muddamal was seized according to law. Complaint came to be filed before the Bharuch Rural Police Station and investigation was handed over to P.S.I. Shri Sandhani and, accordingly, charge-sheet for the offence punishable under sec. 20(b) of the Narcotic Drugs & Psychotropic Substances Act came to be filed against both the accused including the present appellant. On appellant having pleaded not guilty, evidence of prosecution was recorded by the ld. trial judge and after hearing both the sides, the judgment and order impugned in this appeal came to be passed.

3. Ld. advocate Ms. Roopal Patel for the appellant and Mr. PD Bhate ld. APP for the respondent-State were heard. Ld. advocate for the appellant restricted arguments in respect of quantum of sentence and the appeal was not pressed on merits.

4. It was argued that the present appellant is aged about 46 years. The substance found from the appellant was ganja in the quantity of about 2 kg. and that too in

the form of stems and leaves. The appellant has family and appellant is the only bread winner of the family. In his absence, his wife has to attend household work of others to earn livelihood for herself and children whose study also could not progress, on account of appellant being in jail. It is also stated that there is no criminal record of the appellant and this is his first crime which appears to have been committed by him on account of compelling circumstances. Therefore, it was argued that the quantum of sentence be reduced to reasonable extent.

5. Having heard the ld. advocates, jail remarks as produced on record by ld. APP was also perused. Out of substantive sentence of 5 years, according to the jail remarks, the appellant has undergone imprisonment of 4 years and 2 months and some days till 25.10.2004. He has not been released on parole, furlough or any temporary bail. His jail conduct is found good. In this circumstances, having regard to the contentions raised by the ld. advocate for the appellant in respect of reduction of sentence and having taken into consideration jail remarks as well as the fact that 90% period of sentence awarded to the appellant has already undergone by him, it appears that this is a fit case wherein the sentence awarded to the appellant be reduced to some extent.

6. In the above view of the matter, while dismissing rest of the appeal of the appellant, only interference is made in this appeal in respect of quantum of sentence awarded to the appellant.

7. In the result, the appeal is partly allowed, while maintaining conviction awarded to the appellant, the quantum of sentence awarded to the appellant is reduced and modified as under:

8. For the offence punishable under sec. 20(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985, proved against the appellant, he is sentenced to undergo R/I of 4 years and to pay fine of Rs. 25000/-, in default to undergo S/I of 3 months, instead of imprisonment of 5 years and fine of Rs. 50,000/-, in default, to undergo 6 months S/I, as awarded by the ld. trial court.

9. Rest of the judgment of the trial court, except modification in quantum of sentence, as aforesaid, is not interfered with.

10. The appellant be released from jail, as and when he is served with the sentence as modified by this court in this appeal, as aforesaid, if he is not required to be detained in jail for any other purpose.

11. Office is directed to transmit the writ of this order to the jail authority immediately.

(J.R. VORA, J.)

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